

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

BEHROOZ TOHIDI
Certificate No. A 40405

Petitioner

Case No. 8002016022934

DECISION AND ORDER

Petitioner, BEHROOZ TOHIDI, has successfully completed a Medical Record Keeping Course, as required by the Medical Board's Decision effective February 24, 2017. Therefore, in accordance with the Decision, Petitioner's Physician and Surgeon's Certificate No. A 40405 is reinstated.

DATED: September 8, 2017

MEDICAL BOARD OF CALIFORNIA



Michelle Bholat, M.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for
Reinstatement of:**

BEHROOZ TOHIDI, M.D.

Case No. 8002016022934

**Physician's and Surgeon's
Certificate No. A 40405**

Petitioner


DECISION

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on February 24, 2017.

IT IS SO ORDERED January 25, 2017.

MEDICAL BOARD OF CALIFORNIA

By: 
**Michelle Bholat, M.D., Chair
Panel B**

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

BEHROOZ TOHIDI, M.D.

Physician's and Surgeon's
Certificate No. A 40405

Petitioner.

Case No. 800-2016-022934

OAH No. 2016110915

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 19, 2016, in San Diego, California.

Giovanni F. Mejia, Deputy Attorney General, represented the Office of the Attorney General, Department of Justice, State of California.

Petitioner Behrooz Tohidi represented himself.

The matter was submitted on December 19, 2016.

SUMMARY

Petitioner surrendered his medical certificate in 2011 with disciplinary charges pending. In this proceeding, petitioner seeks reinstatement of that certificate. Petitioner provided clear and convincing evidence that he is rehabilitated; his medical certificate should be reinstated. However, before it is reinstated, petitioner must provide proof that he has completed an approved medical record keeping course.

FACTUAL FINDINGS

California License History

1. The Medical Board of California issued Physician's and Surgeon's Certificate No. A 40405 to Behrooz Tohidi on August 29, 1983.

2. On May 11, 2010, the Executive Director of the Medical Board of California filed an accusation against Dr. Tohidi that alleged Dr. Tohidi engaged in gross negligence, repeated negligent acts, and failed to maintain adequate and accurate medical records. The allegations arose out of a hip replacement surgery taking place in 2005. On August 25, 2011, Dr. Tohidi entered into a Stipulated Surrender of License and Disciplinary Order. The stipulated surrender was adopted as a decision of the Medical Board of California effective December 15, 2011.

3. On April 25, 2016, Dr. Tohidi filed a petition for penalty relief with the Medical Board of California requesting that his physician's and surgeon's certificate be reinstated. The board filed this matter with the Office of Administrative Hearings on November 28, 2016 and the present hearing was set.

Background, Education and Other Licenses

4. Petitioner attended undergraduate and medical college at Pahlavi (now known as Shiraz) University in Iran. He was graduated from undergraduate school in 1967 and medical school in 1975. He participated in a residency in general surgery at the University of Rochester in Rochester, New York from 1975 to 1979. He participated in an orthopedic surgery residency from 1979 to 1983 at Emory University in Atlanta, Georgia. He worked in Northern San Diego County at various clinics from 1983 to 2005, when he moved to Swainsboro, Georgia and joined the staff at Emanuel Medical Center. From 2008 to 2015, he worked at Southwestern Medical Center in Lawton, Oklahoma. He has been taking time off to travel since leaving Emanuel Medical Center. He recently began seeking employment and believes he has some promising options outside of California.

5. Petitioner is licensed to practice medicine in New York, Georgia and Oklahoma. His New York and Georgia licenses are on inactive status.

6. After he surrendered his California certificate, the State of New York instituted disciplinary action against Dr. Tohidi's New York license to practice medicine. In June, 2013, the New York State Department of Health, Board for Professional Medical Conduct, reviewed records from the California disciplinary action and issued a censure and reprimand. There has been no discipline from the other states in which he is licensed.

7. The American Board of Orthopaedic Surgery's certification committee met to decide what action, if any, to take following Dr. Tohidi's surrender of his California certificate in lieu of disciplinary action. In April, 2013, the committee announced it had

decided not to revoke Dr. Tohidi's board certification. He is eligible to apply for re-certification in 2017 and plans to do so.

The Underlying Surgical Case; License Surrender

8. As part of the surrender, Dr. Tohidi stipulated to the truth of the matters alleged in the accusation. Patient G.M. first presented to petitioner in December 2004. The patient had severe degenerative conditions with bone to bone contact and severely restricted range of motion in his left hip. The patient's left leg was one centimeter shorter than his right leg. Petitioner recommended a left total hip joint replacement. The operation was performed in January 2005.

Dr. Tohidi did not evaluate and document hip stability and range of motion during the surgical procedure. In addition, he failed to measure leg lengths during that procedure. In his post-surgery operative report, he erroneously stated that the patient's leg lengths were equal. However, shortly after surgery, he observed the patient walking in the hospital and realized his leg lengths were not equal. He saw the patient for follow-up visits in February, April, June, and July, 2005. During the April visit, he visually estimated the leg length discrepancy, but did not measure it. During the other visits, he did not measure or estimate the leg length discrepancy. In fact, after the surgery, G.M.'s left leg was 1.5 centimeters longer than his right. Petitioner recommended treatment of the leg length discrepancy with a shoe lift and physical therapy. He did not discuss and document any other treatment options, including additional surgery.

9. At the hearing, Dr. Tohidi acknowledged that he made several medical and charting errors in the case. He said he was attempting to correct the patient's pre-existing leg length discrepancy during placement of the artificial hip. He said he used anatomical landmarks at the hip and neck of the femur as a guide. He realized after the surgery that he over compensated and the patient, whose left leg had been one centimeter shorter than his right, now had a left leg 1.5 centimeters *longer* than the right. The difference was striking and significant to the patient, although Dr. Tohidi did not consider it a major complication of the surgery at the time. He acknowledged that he should have considered it a significant complication and should have treated accordingly. He also admitted that he should have used inter-operative fluoroscopy to make certain the patient left the operating room without a leg length discrepancy.

He also acknowledged that he did not properly chart the leg length issue in his operative notes, and failed to adequately document his discussions with the patient about what to do after the surgery. He testified the patient was probably going to need a hip replacement on the right side in a few years. One option Dr. Tohidi considered was to wait until that hip replacement surgery and try to correct the discrepancy during that surgery. Although he considered this option, he did not document or discuss it with the patient. He stated he should have presented surgical options to the patient more clearly. He also agreed he should have documented the discussions about treatment options more fully.

10. After the accusation was filed, Dr. Tohidi decided to surrender his license because he had already moved and was working in Georgia, and his attorney quoted a very high price to go to hearing. He did not like the prospect of three years of probation with additional medical coursework in California because he was going to be living in another state. So he agreed to surrender his California certificate.

Rehabilitation

11. Dr. Tohidi has taken steps to prevent similar medical errors and charting mistakes in the future. He uses inter-operative fluoroscopy and is more aggressive in correcting hip alignment and leg length issues before closing a patient and completing a surgery. He acknowledged that part of the charting problem was a result of using templates in the electronic medical record. He has changed his charting practice and no longer relies on templates. He dictates each report from start to finish. He said he is also more thorough in documenting his discussions with patients concerning options, risks and benefits.

12. There is no evidence of any subsequent acts that would constitute additional grounds for discipline. There are no disciplinary actions pending in any of the other states in which petitioner holds a license to practice medicine. There was no evidence of any prior discipline in California. Dr. Tohidi practiced orthopedic surgery in California successfully for 22 years before the incident that gave rise to the accusation. He has practiced medicine successfully in other states for 11 years since he surrendered his California certificate.

13. Dr. Tohidi offered statements from other physicians in support of his petition. One was from a physician who is also a patient of Dr. Tohidi. This physician was looking for an orthopedic surgeon to manage his progressive knee deterioration. He observed petitioner in surgery and evaluated his technical expertise before selecting petitioner to manage his case. This physician also looked at Dr. Tohidi's charting practices on mutual patients. The prospective patient found petitioner's charts were prompt and extensive. After selecting Dr. Tohidi to manage his care, the physician/patient has had Dr. Tohidi perform five orthopedic procedures with excellent results.

14. Petitioner also provided a letter from the Chief Executive Officer of the medical center in Oklahoma where he worked. The letter noted that Dr. Tohidi "developed a following of patients who sing [his] praises."

15. Petitioner has taken over 250 credits of continuing medical education, including several courses on hip treatment. He has not taken a formal medical recordkeeping course.

Evaluation

16. Dr. Tohidi's testimony was straight-forward and candid. He did not evade answering any questions. He readily admitted his medical and charting errors and testified he undertaken a plan of action to correct those errors so they will not occur again. By

stipulating to the surrender his license, he accepted the consequences of his mistakes. In doing so, he prevented the expenditure of significant personal and public resources that would have resulted from going through a hearing.

17. California Code of Regulations, title 16, section 1360.2, requires considering the nature and severity of Dr. Tohidi's conduct. Since there was no underlying hearing, there are no factual findings to consider. Based on the allegations in the underlying case, the evidence presented at this hearing, and Dr. Tohidi's admissions, cause for discipline was present in the underlying case. Had the case gone to a hearing, it likely would have resulted in, at a minimum, a reprimand with the requirement Dr. Tohidi complete an educational course and, at maximum, a revocation stayed with probationary terms including a record keeping course. A single patient negligence case like this would be very unlikely to result in revocation of the license. Instead of taking his chances at hearing, Dr. Tohidi voluntarily chose to undergo the last five years on what was essentially a suspended status. Having a suspended license has had an impact on his career that is similar to the impact that would have resulted had discipline been imposed in the underlying case. Dr. Tohidi has suffered disciplinary consequences for his errors.

The imposition of further discipline, such as probation, would not provide an additional measure of public protection, and would result in punishment. However, public protection would be enhanced by requiring Dr. Tohidi to take and complete a formal medical record keeping course. The appropriate mechanism to ensure his compliance with this requirement is to make completion of a record keeping course a condition precedent to license reinstatement.

LEGAL CONCLUSIONS

1. In a proceeding for the restoration of a revoked license, the burden at all times rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement must present strong proof of rehabilitation and the showing of rehabilitation must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

Although petitioner's license was not revoked (he surrendered it with an accusation pending), the same analysis applies. The burden is on Dr. Tohidi to present strong proof of his rehabilitation sufficient to overcome the facts to which he stipulated, and which resulted in the underlying disciplinary matter.

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2. Business and Professions Code section 2307 provides in part:

(a) A person whose certificate has been surrendered while ... charges are pending ... may petition the board for reinstatement ...

[¶] ... [¶]

(c) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physicians and surgeons licensed in any state who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

[¶] ... [¶]

(e) The ... administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability

3. California Code of Regulations, title 16, section 1360.2 provides the rehabilitation criteria for a petition for reinstatement:

When considering a petition for reinstatement of a license, certificate or permit holder ... the division or panel shall evaluate evidence of rehabilitation submitted by the petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in Section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

4. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when a petitioner demonstrates by his sustained conduct over an extended period of time that he is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

5. Based on all of the rehabilitation criteria set forth in the California Code of Regulations, title 16, section 1360.2, petitioner presented clear and convincing evidence of his rehabilitation and a history of sound medical practice before and after the incident that gave rise to the accusation. It is appropriate to reinstate his license. However, public protection would benefit from petitioner's completion of an approved formal medical record keeping course before reinstatement. This conclusion is based on Factual Findings 1 through 17 and Legal Conclusions 1 through 4.

ORDER

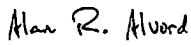
Petitioner Behrooz Tohidi's Physician's and Surgeon's Certificate No. A 40405 is reinstated. However, the effective date of the reinstatement is stayed until petitioner provides the Medical Board with proof that he successfully completed a course in medical record keeping equivalent to the Medical Record Keeping Course offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine (Program), which has been approved in advance by the Board or its designee. Petitioner shall provide the program with any information and documents that the Program may deem pertinent. The cost of the medical record keeping course shall be at petitioner's expense and shall be in addition to any Continuing Medical Education (CME) requirements for renewal of licensure.

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A medical record keeping course taken after petitioner's hearing for reinstatement of his certificate, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

DATE: December 22, 2016

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ALAN R. ALVORD
Administrative Law Judge
Office of Administrative Hearings